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JAMES GUERIN

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

JAMES GUERIN, an individual,

Plaintiff,

v.

SVC-WEST, L.P., SHELL VACATIONS CM
CORP formerly known as SHELL
DEVELOPMENT CORP – SAN FRANCISCO
and JOHN CARTER, an individual

Defendants.

) Case No. C 07 -03153 CW

) **FIRST AMENDED COMPLAINT FOR**
) **DAMAGES FOR EMPLOYMENT**
) **DISCRIMINATION AND HARASSMENT**
) **IN VIOLATION OF THE AMERICANS**
) **WITH DISABILITIES ACT; DISABILITY**
) **DISCRIMINATION IN VIOLATION OF**
) **THE CALIFORNIA FAIR**
) **EMPLOYMENT AND HOUSING ACT;**
) **HARASSMENT IN VIOLATION OF THE**
) **FEHA; FAILURE TO REASONABLY**
) **ACCOMMODATE DISABILITY UNDER**
) **FEHA AND ADA; HARASSMENT BASED**
) **ON SEXUAL ORIENTATION IN**
) **VIOLATION OF FEHA; VIOLATION OF**
) **FAMILY AND MEDICAL LEAVE ACT;**
) **VIOLATION OF CAL FAMILY RIGHTS**
) **ACT; WRONGFUL CONSTRUCTIVE**
) **TERMINATION, IN VIOLATION OF**
) **PUBLIC POLICY; INTENTIONAL**
) **INFLECTION OF EMOTIONAL**
) **DISTRESS; NEGLIGENT INFLECTION**
) **OF EMOTIONAL DISTRESS**

) **DEMAND FOR JURY TRIAL**

) (Americans with Disabilities Act, 42 U.S.C.
) § 12101 et seq.; Title VII of Civil Rights Act
) of 1964, as appended, 42 U.S.C. § 2000e-
) 2000e-17; Fair Employment and Housing
) Act, California Government Code §§
) 12900(a)-12996; Federal Family and
) Medical Leave Act, 29 U.S.C. §§ 2601-2636;
) California Government Code § 12945.2

JURISDICTION

1
2 1. The jurisdiction of this Court is based upon the existence of a federal
3 question and arises under the Americans with Disabilities Act, 42 U.S.C. §§ 12101 to 12213
4 (“ADA”). Jurisdiction is conferred on this Court by 42 U.S.C. § 12117 which provides Plaintiff
5 the powers, remedies and procedures set forth in Title VII, § 2000e-5(f)(3). Supplemental
6 jurisdiction over the claims arising under California state law exists pursuant to 28 U.S.C. §
7 1367(a).

INTRADISTRICT ASSIGNMENT

8
9 2. Venue is proper in this District pursuant to Title VII, § 2000e-5(f)(3) because the
10 unlawful acts and practices alleged herein occurred in the Cities of Napa and San Francisco,
11 Counties of Napa and San Francisco, California, which are situated in this judicial district.

12 3. At all material times, Plaintiff James Guerin (“GUERIN”), was a resident of the
13 State of California, County of San Francisco or County of Napa. The employment relationship
14 upon which he sues herein was made in and to be performed in the Cities of San Francisco and
15 Napa, Counties of San Francisco and Napa, State of California. At all material times, GUERIN
16 worked for Defendant(s) SVC-WEST, L.P. and SHELL VACATIONS CM CORP formerly
17 known as Shell Development Corp – San Francisco and Shell Vacations Club, LLC (“SHELL
18 VACATIONS” or “DEFENDANT”). The address where GUERIN last worked for Defendant
19 SHELL VACATIONS was 865 Bordeaux Way, Napa, CA 94558. GUERIN is informed and
20 believes that Defendant JOHN CARTER (“CARTER”), an individual, was Defendant’s Regional
21 Director of Marketing and GUERIN’S manager. At all times GUERIN believes that CARTER
22 was taking the actions alleged herein based upon the managerial relationship between CARTER
23 and GUERIN with CARTER’S harassment of GUERIN falling outside the normal expectations of
24 the employee and employer relationship. (Together, hereinafter Defendant SHELL VACATIONS
25 and Defendant CARTER will be collectively known as “DEFENDANTS”).

26 4. GUERIN is informed and believes and thereon alleges that Defendant SHELL
27 VACATIONS is, and at all times herein mentioned, was, a corporation with its principal place of
28 business in Illinois and was licensed to, and did do, business in San Francisco and Napa Counties,

1 California. GUERIN is informed and believes that CARTER at all times herein mentioned also
2 did business in the Counties of San Francisco and Napa, State of California.

3 5. Defendant entered into an employment relationship with GUERIN beginning in
4 approximately June 2003 when GUERIN was hired by Defendant SHELL VACATIONS. The
5 injuries on which this action is based arise out of the aforementioned employment relationship.

6 6. In early March 2007, GUERIN filed complaints of discrimination, harassment,
7 failure to reasonably accommodate a disability, wrongful constructive termination based on
8 disability and sexual orientation with the Equal Employment Opportunity Commission ("EEOC")
9 and California Department of Fair Employment and Housing ("DFEH"). His complaints also
10 included allegations that Defendants did not allow him to take the necessary time off under both
11 the Federal Family and Medical Leave Act ("FMLA") and the California Family Rights Act
12 ("CFRA"). GUERIN filed similar complaints against CARTER.

13 7. The EEOC issued GUERIN a right-to-sue notice on March 16, 2007 which was
14 received on or about March 18, 2007. The notice gave GUERIN 90 days in which to bring a
15 federal action. By doing the foregoing, GUERIN has exhausted his administrative remedies and
16 conferred the jurisdiction of this court.

17 8. The DFEH issued GUERIN right-to-sue letters on March 15, 2007, giving him one
18 year from that date to bring a civil action against DEFENDANTS in State court under the
19 provisions of the Fair Employment and Housing Act ("FEHA") and CFRA, California
20 Government Code §§12900(a)-12996. By doing the foregoing, GUERIN has further exhausted
21 his administrative remedies and conferred the jurisdiction of this court.

22 **FACTUAL BACKGROUND**

23 9. GUERIN was hired by Defendant SHELL VACATIONS in approximately June 2003.
24 He had previously worked with CARTER and Scott Hall ("Hall") who together recruited him in
25 2003 to work for Defendant SHELL VACATIONS in San Francisco. He accepted employment
26 with Defendant SHELL VACATIONS as its OPC-Concierge PM Supervisor and moved from
27 Hawaii to California for the position.
28

1 10. GUERIN is a Caucasian male who is a recovering alcoholic and has been for
2 approximately the last eight years. As such, his condition is considered to be a disability and is
3 protected under both the ADA and the California Fair Employment and Housing Act ("FEHA").
4 GUERIN is also a gay male, thus protected based upon his sexual orientation under the FEHA.

5 11. At the time GUERIN began his employment with SHELL VACATIONS, GUERIN
6 was sober and a recovering alcoholic. In contrast, CARTER was an active drinker and drug user
7 and continued to abuse both through-out GUERIN'S employment. CARTER'S abuse resulted in
8 his missing several days of work and being unavailable because he was either inebriated or under
9 the influence of the drugs. Employees and managers at SHELL VACATIONS pervasively used
10 alcohol and illegal drugs whether on the job, at company functions, employee gatherings or after
11 hours. Defendant SHELL VACATIONS knew of, ignored or participated in and thus, ratified said
12 employees' and managers' use of alcohol and illegal substances in the workplace.

13 12. GUERIN reported to Hall until Hall was terminated in approximately September
14 2003. During this timeframe GUERIN'S performance was exemplary. GUERIN replaced Hall
15 when Hall was terminated as DEFENDANT'S In-House Concierge Manager managing five hotel
16 properties in the San Francisco area. GUERIN then reported directly to CARTER. While in this
17 position, GUERIN increased the profitability of each concierge marketing program in each of the
18 five hotels and decreased each program's respective expenses. He consistently received excellent
19 feedback on his performance and regularly made his commissions. CARTER rewarded GUERIN
20 by promoting him to the Director of Marketing position for Defendant SHELL VACATIONS'
21 Napa Project in Napa, California in approximately mid December 2005, finalizing the
22 appointment in approximately January 2006 and increasing his potential compensation.

23 13. Defendant's Napa Project sales room opened as scheduled on May 12, 2006.
24 Between December 2005 and April 2006, GUERIN commuted between San Francisco and Napa
25 and worked as the Director of Marketing in Napa while assisting his replacement in San
26 Francisco, routinely working extensively long hours. At the same time the opening of the Napa
27 Project Hotel itself was delayed because of rain which interfered with the construction of the
28 hotel. GUERIN was not responsible for the construction of the hotel. This delay, however,

1 resulted in lost in-house tours in the sales room between May and July 2006 and in turn, lost
2 revenues. To compensate, GUERIN found alternative marketing sources.

3 14. Beginning in January 2006 CARTER'S attitude, behavior and treatment of
4 GUERIN began to escalate and became unprofessional, derogatory and harassing. CARTER
5 would become cruel, curt and harsh often using the "f" word and degrade GUERIN for his work
6 despite the fact that CARTER should have appointed someone, whether GUERIN or otherwise, to
7 the Director of Marketing position for the Napa project at least one year prior to the opening to
8 ensure its success.

9 15. From approximately early 2006 through April 2006, CARTER would at least once
10 to twice a week prolifically rant and rave at GUERIN for some unsubstantiated performance
11 deficiency which either was not within GUERIN'S realm of control or responsibility and despite
12 GUERIN'S working extensive hours, not taking time off and working as expeditiously as possible
13 to ensure that the project opened in May as scheduled. CARTER'S tirades occurred both in
14 person and via telephone and could last anywhere from a few minutes to over an hour. They left
15 GUERIN feeling distressed, degraded, humiliated and despondent. During this same time period
16 GUERIN would travel to San Francisco to meet with CARTER only to find that CARTER was
17 unavailable because he was intoxicated and wasted from consuming drugs or alcohol. Given the
18 pending opening of the new project, CARTER'S unavailability severely interfered with
19 GUERIN'S ability to proceed and required that GUERIN exercise independent decision making.
20 CARTER'S tirades were sometimes witnessed by other employees including Defendant SHELL
21 VACATION'S human resources representative, Melanie Ignacio ("Ignacio"), whose office was
22 across the hall from CARTER'S office, and so, on information and belief, heard CARTER'S
23 tirades through the office walls yet took no corrective action towards CARTER.

24 16. During this same time period, GUERIN began experiencing physical side-effects as
25 the result of CARTER'S aggressive and violent temper and resulting harassment and
26 discrimination in the workplace. His blood pressure increased to a dangerously high level and
27 between two to five times per day GUERIN would have chest pains that ranged from moderate to
28 severe. GUERIN sought the advice of a physician who counseled him to leave his employment

1 with Defendant SHELL VACATIONS. GUERIN discussed CARTER'S illicit drug and alcohol
2 use and harassment and discrimination of GUERIN with his physician. GUERIN'S physician
3 acknowledged that other people had complained about CARTER'S drug and alcohol abuse.

4 17. Beginning in May 2006 CARTER'S tantrums and tirades occurred almost daily if
5 not several times during the same day. His tirades increased in ferocity and length as the opening
6 of the Napa Project grew nearer in time.

7 18. CARTER'S tirades towards GUERIN were laced with swear words, the "f" word
8 and degrading comments of GUERIN'S incompetence and inabilities. CARTER commonly
9 would tell GUERIN that he liked him better when he drank or didn't like him since he was sober.
10 After CARTER had learned in a previous civil lawsuit that GUERIN was gay, CARTER would
11 call someone he did not like a "cock-sucker" and when doing so, would look specifically at
12 GUERIN.

13 19. GUERIN could no longer tolerate the abusive, demeaning, harassing and hostile
14 work environment because it was severely affecting his health and disability. GUERIN repeatedly
15 told CARTER that he needed time off from work or he would start drinking again. His chest pains
16 and blood pressure became alarmingly high to the point that GUERIN was concerned for his life.
17 GUERIN also told CARTER about his elevated blood pressure, chest pains and fear of having a
18 stroke or heart attack. CARTER responded to GUERIN by denying his requests for time off and
19 instead of decreasing his tirades towards GUERIN, increased them, again using the "f" word and
20 stating that he didn't care if GUERIN died on the job. GUERIN'S co-workers also asked
21 CARTER for time off for GUERIN which CARTER denied.

22 20. On June 21, 2006 CARTER called GUERIN and went into an hour long tirade
23 during which he frenetically yelled at GUERIN for no reason. During the conversation GUERIN
24 suffered severe chest pains and distress and was severely concerned for his health. Mindful of his
25 physician's recent warnings, at the end of the conversation GUERIN gave his files to the Chief
26 Concierge of the Napa Project, Linda Lundquist, ("Lundquist"), and resigned.

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FIRST CAUSE OF ACTION

**EMPLOYMENT DISCRIMINATION AND HARASSMENT IN
VIOLATION OF THE AMERICANS WITH DISABILITIES
ACT OF 1990 42 U.S.C. §§ 12101 et seq.**

AGAINST DEFENDANT SHELL VACATIONS

21. GUERIN repeats and re-alleges the allegations set forth in paragraphs 1 through 20, inclusive, of this Complaint.

22. GUERIN was at all times material hereto an employee, as defined with 42 U.S.C. § 12111(4) and thus was covered by 42 U.S.C. § 12101 et seq., otherwise known as the "ADA". Said statute prohibits discrimination, harassment and retaliation in employment based on one's disability.

23. Defendant SHELL VACATIONS is and was at all times material hereto an employer within the meaning of 42 U.S.C § 12111(5)(A). As such, Defendant SHELL VACATIONS is barred from discriminating in any term, condition or privilege of employment, on the basis of an employee's disability and from harassing an employee on the same basis.

24. Defendant SHELL VACATIONS discriminated against and harassed GUERIN on the basis of his disability in violation of 42 U.S.C. § 12101 et seq. when, Defendant SHELL VACATIONS, primarily CARTER, harassed GUERIN because of his disability by continuously making derogatory and degrading comments on the basis of his alcoholism and/or CARTER'S preference that he liked GUERIN better when GUERIN drank vs when GUERIN was sober.

25. Defendant SHELL VACATIONS also discriminated and harassed GUERIN in violation of the ADA when CARTER denied GUERIN'S requests for time off even after GUERIN informed CARTER that he needed time off or he might relapse and possibly start drinking alcohol again and was also experiencing dangerously high blood pressure and chest pains, putting his health in danger.

26. Defendant SHELL VACATIONS' discrimination and harassment towards GUERIN because of his disability resulted in GUERIN suffering from extremely high blood pressure, chest pains and other adverse physical side-effects. When CARTER'S behavior was

1 combined with GUERIN'S health problems, GUERIN had no choice but to resign his employment
2 with Defendant SHELL VACATIONS fearing that if he did not, he could possibly suffer a stroke,
3 heart attack or other permanent damage to his physical and emotional health.

4 27. As a proximate result of Defendant SHELL VACATIONS' conduct, GUERIN has
5 suffered, and will continue to suffer, substantial losses incurred in earnings and other employment
6 benefits he would have received had Defendant SHELL VACATIONS not taken such adverse
7 employment action against him.

8 28. Further, and as a proximate result of Defendant SHELL VACATIONS' conduct,
9 GUERIN has suffered, and will continue to suffer, emotional distress damages including anxiety,
10 humiliation, physical pain and other emotional distress in an amount according to proof.

11 29. GUERIN is informed and believes that Defendant SHELL VACATIONS' actions,
12 as set forth above, were motivated by animus towards GUERIN based on his disability. Said acts
13 were committed maliciously, fraudulently and oppressively, with the wrongful intention of
14 injuring GUERIN, and with an improper and evil motive amounting to malice. Said acts were
15 carried out by managerial employees acting within the course and scope of their employment with
16 Defendant SHELL VACATIONS and with the intent to injure GUERIN. GUERIN is therefore
17 entitled to recover compensatory and punitive damages commensurate with Defendants' wealth,
18 and as set forth under 42 U.S.C. § 1981(a)(2).

19 30. As a result of Defendant SHELL VACATIONS' discriminatory acts as alleged
20 herein, including violation of the ADA, GUERIN was damaged in an amount to be proven at trial,
21 including, but not limited to, compensatory, general and punitive damages, attorney fees and costs,
22 according to proof and as provided by 42 U.S.C. § 1981(a)(2) and 42 U.S.C.
23 § 12133.

24 WHEREFORE, GUERIN requests relief as hereinafter provided.

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27 **SECOND CAUSE OF ACTION**

28 **EMPLOYMENT DISCRIMINATION BASED ON DISABILITY IN**

**VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT
GOVERNMENT CODE SECTIONS 12900(a)-12996**

AGAINST DEFENDANT SHELL VACATIONS

31. GUERIN repeats and re-alleges the allegation set forth in paragraphs 1 through 30, inclusive, of this Complaint.

32. Defendant SHELL VACATIONS has discriminated against GUERIN on the basis of his disability in violation of California Government Code sections 12900(a) through 12996 (otherwise known as the "FEHA") when, Defendant SHELL VACATIONS, primarily through its Regional Director of Marketing, CARTER, discriminated against GUERIN because of his disability by continuously making derogatory and degrading comments on the basis of his alcoholism and/or CARTER'S preference that he liked GUERIN better when he drank. CARTER also discriminated against GUERIN by inappropriately measuring GUERIN'S performance on the basis of his being sober instead of on the merits of his performance.

33. Defendant SHELL VACATIONS also discriminated against GUERIN in violation of the FEHA when CARTER repeatedly denied GUERIN'S requests for time off even after GUERIN informed CARTER that he needed time off or he might relapse and possibly again start drinking alcohol and/or was experiencing dangerously high blood pressure and chest pains, putting his health in danger.

34. CARTER'S discrimination of GUERIN was so prevalent in the workplace that on information and belief, other members of SHELL VACATIONS' management staff heard CARTER make the degrading and condescending comments to GUERIN and rejection of GUERIN'S requests for time off yet ignored it and did nothing to correct his behavior. As such, SHELL VACATIONS ratified and condoned CARTER'S discrimination of GUERIN.

35. Defendant SHELL VACATIONS' discrimination against GUERIN based on his disability resulted in GUERIN suffering from extremely high blood pressure, chest pains and other adverse physical and emotional side-effects. When CARTER'S behavior was combined with GUERIN'S health problems, GUERIN had no choice but to resign his employment with Defendant SHELL VACATIONS or possibly suffer a stroke, heart attack or other permanent damage to his physical and emotional health.

1 36. Defendant SHELL VACATIONS engaged in a pattern and practice of
2 discriminating against and harassing employees, including GUERIN, on the basis of their
3 protected categories, including disability, in violation of California Government Code sections
4 12900(a) through 12996 by engaging in the course of conduct set forth above.

5 37. As a proximate result of Defendant SHELL VACATIONS' conduct, GUERIN has
6 suffered, and continues to suffer, substantial losses incurred in earnings and other employment
7 benefits he would have received had Defendant SHELL VACATIONS not taken such adverse
8 employment action against him.

9 38. Further, as a proximate result of Defendant SHELL VACATIONS' conduct,
10 GUERIN has suffered, and continues to suffer, emotional distress damages including anxiety,
11 humiliation, physical pain and other emotional distress in an amount according to proof.

12 39. GUERIN is informed and believes that Defendant SHELL VACATIONS' actions
13 as defined above were motivated by animus towards GUERIN based on his disability. Said acts
14 were committed maliciously, fraudulently and oppressively, with the wrongful intention of
15 injuring GUERIN, and with an improper and evil motive amounting to malice. Said acts were
16 carried out by managerial employees acting within the course and scope of their employment with
17 Defendant SHELL VACATIONS and with the intent to injure GUERIN. GUERIN is therefore
18 entitled to recover compensatory and punitive damages commensurate with Defendants' wealth
19 and as set forth under California Government Code sections 12900(a) – 12996 and California
20 Civil Code section 3294.

21 40. As a result of Defendant SHELL VACATIONS' discriminatory acts as alleged
22 herein, including violation of said California Government Code, GUERIN was damaged in an
23 amount to be proven at trial, including, but not limited to, compensatory, general and punitive
24 damages, attorney fees and costs according to proof and as provided by California Government
25 Code sections 12900(a) – 12996 and California Civil Code section 3294.

26 WHEREFORE, GUERIN requests relief as hereinafter provided.

27 **THIRD CAUSE OF ACTION**

28 **HARASSMENT BASED ON DISABILITY IN**

**VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT
GOVERNMENT CODE SECTIONS 12900(a)-12996**

AGAINST ALL DEFENDANTS

41. GUERIN repeats and re-alleges the allegation set forth in paragraphs 1 through 40, inclusive, of this Complaint.

42. Defendants SHELL VACATIONS and CARTER harassed GUERIN on the basis of his disability in violation of California Government Code sections 12900(a) through 12996 (otherwise known as the "FEHA") when CARTER, as Defendant SHELL VACATIONS' Regional Director of Marketing and GUERIN'S boss, continuously made derogatory and degrading comments on the basis of GUERIN'S alcoholism and/or CARTER'S preference that he liked GUERIN better when he drank. CARTER'S tirades were also fraught with swear words and derogatory comments and at times were yelled at GUERIN in a loud, angry voice. CARTER made these comments to GUERIN himself and openly in front of other employees. CARTER'S degrading comments belittled GUERIN in front of his staff, peers and co-workers.

43. Defendants SHELL VACATIONS and CARTER also harassed GUERIN in violation of the FEHA when CARTER repeatedly denied GUERIN'S requests for time off even after GUERIN informed CARTER that he needed time off or he might relapse and possibly again start drinking alcohol and/or was experiencing dangerously high blood pressure and chest pains, putting his health in danger. CARTER'S rejection of GUERIN'S requests were often loud, obnoxious and humiliating. CARTER'S harassment of GUERIN was so prevalent in the workplace that on information and belief, other members of SHELL VACATIONS' management staff heard CARTER make the degrading and condescending comments to CARTER yet ignored it and did nothing to correct his behavior. As such, SHELL VACATIONS ratified and condoned CARTER'S harassment of GUERIN.

44. Defendants SHELL VACATIONS' and CARTER'S harassment of GUERIN based on his disability resulted in GUERIN suffering from extremely high blood pressure, chest pains and other adverse physical and emotional side-effects. When CARTER'S behavior was combined with GUERIN'S health problems, GUERIN had no choice but to resign his employment with

1 Defendant SHELL VACATIONS or possibly suffer a stroke, heart attack or other permanent
2 damage to his physical and emotional health.

3 45. Defendants SHELL VACATIONS and CARTER engaged in a pattern and practice
4 of harassing employees, including GUERIN, on the basis of their protected categories, including
5 disability, in violation of California Government Code sections 12900(a) through 12996 by
6 engaging in the course of conduct set forth above.

7 46. As a proximate result of Defendants SHELL VACATIONS' and CARTER'S
8 conduct, GUERIN has suffered, and continues to suffer, substantial losses incurred in earnings and
9 other employment benefits he would have received had Defendants SHELL VACATIONS and
10 CARTER not taken such adverse employment action against him.

11 47. Further, as a proximate result of Defendants SHELL VACATIONS' and
12 CARTER'S conduct, GUERIN has suffered, and continues to suffer, emotional distress damages
13 including anxiety, humiliation, physical pain and other emotional distress in an amount according
14 to proof.

15 48. GUERIN is informed and believes that Defendant SHELL VACATIONS' and
16 CARTER'S actions as defined above were motivated by animus towards GUERIN based on his
17 disability. Said acts were committed maliciously, fraudulently and oppressively, with the
18 wrongful intention of injuring GUERIN, and with an improper and evil motive amounting to
19 malice. Said acts were carried out by managerial employees acting within the course and scope of
20 their employment with Defendant SHELL VACATIONS and with the intent to injure GUERIN.
21 GUERIN is therefore entitled to recover compensatory and punitive damages commensurate with
22 Defendants' wealth and as set forth under California Government Code sections 12900(a) – 12996
23 and California Civil Code section 3294.

24 49. As a result of Defendant SHELL VACATIONS' and CARTER'S harassing acts as
25 alleged herein, including violation of said California Government Code, GUERIN was damaged in
26 an amount to be proven at trial, including, but not limited to, compensatory, general and punitive
27 damages, attorney fees and costs according to proof and as provided by California Government
28 Code sections 12900(a) – 12996 and California Civil Code section 3294.

1 WHEREFORE, GUERIN requests relief as hereinafter provided.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO REASONABLY ACCOMMODATE DISABILITY INCLUDING FAILURE**
4 **TO ENGAGE IN THE INTERACTIVE PROCESS**
5 **IN VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT**
6 **GOVERNMENT CODE SECTION 12940 *et seq***

7 **AGAINST DEFENDANT SHELL VACATIONS**

8 50. GUERIN repeats and re-alleges the allegations set forth in paragraphs 1 - 49,
9 inclusive, of this Complaint.

10 51. At all times herein mentioned, California Government Code § 12900, et seq., was in
11 full force and effect and binding on Defendant SHELL VACATIONS. Section 12940 requires
12 Defendant SHELL VACATIONS to reasonably accommodate an employee with a known physical
13 or mental disability and to meet and confer with the employee regarding those reasonable
14 accommodations. Within the time provided by law, GUERIN filed a complaint with the DFEH in
15 full compliance with this section and received a right to sue letter.

16 52. When his employment first commenced with SHELL in 2003, GUERIN had been
17 clean and sober for approximately four years. CARTER was aware of this fact when he hired him.
18 Despite this, CARTER, especially after December 2005, made derogatory and degrading
19 comments to GUERIN about the fact that he was sober rather than drunk. Of greater concern,
20 CARTER ignored GUERIN'S requests for time off from work for a three to four month period of
21 time despite GUERIN having informed CARTER that if he did not have time off that he may
22 return to consuming alcohol and no longer be sober and despite GUERIN informing CARTER
23 that he was experiencing high blood pressure and chest pains which in turn, caused him great
24 concern that he would eventually suffer a heart attack or stroke. Further, CARTER himself
25 regularly consumed alcohol and used illegal substances, impliedly encouraging GUERIN and
26

1 peers to consume alcohol and use drugs both at work and during non-work hours. The
2 consumption of alcohol and use of drugs was not only prevalent but encouraged in the workplace.
3 GUERIN and his peers on his behalf continued to request time off. GUERIN did not acquiesce to
4 the use of drugs and alcohol. Instead, GUERIN found the whole work environment so toxic that
5 he had no choice but to resign including on the recommendation of his physician.

6 53. Despite CARTER'S actions and detrimental behavior towards GUERIN, and
7 SHELL VACATIONS' acceptance and ratification of CARTER'S actions, GUERIN could and
8 did perform the essential functions of his Director of Marketing position by preparing for the Napa
9 Project's opening in 2006 in an extremely short period of time. This included ensuring a
10 continuous flow of qualified potential buyers to the Napa Sales Center. In order to achieve this
11 goal, GUERIN, among other actions, established contractual relationships with top activity
12 vendors in Napa Valley for promotional use; developed the Napa Dining Certificate program with
13 Napa and Sonoma county restaurants; recruited, trained and staffed the In-House and Community
14 Marketing Departments; developed marketing materials; oversaw all mini-vacation ("mini-vac")
15 tour traffic; and developed the Napa "Gold Card" merchant program. GUERIN also negotiated
16 contracts with highly selective and prestigious locations including the Napa Wine Train Station,
17 Oakville Grocery, and the Napa Valley Conference and Visitor's Bureau. GUERIN met or
18 exceeded all of the marketing goals set for the Napa Project.

21 54. As a direct result of SHELL VACATIONS' willful, knowing and intentional
22 discrimination against GUERIN and failure to reasonably accommodate his disability, he has
23 sustained and continues to sustain substantial losses in earnings and other employment benefits.

24 55. As a direct result of SHELL VACATIONS' willful, knowing and intentional
25 discrimination against GUERIN and failure to reasonably accommodate his disability, he has
26
27
28

1 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and
2 anguish, all to his damage in a sum according to proof.

3 56. GUERIN has incurred and continues to incur legal expenses and attorney's fees.
4 GUERIN is presently unaware of the precise amount of those expenses and fees and prays leave of
5 court to amend this complaint when those amounts are more fully known.

6 57. GUERIN is informed and believes that SHELL VACATIONS' actions as defined
7 above were motivated by animus towards GUERIN based on his disability. Said acts were
8 committed maliciously, fraudulently and oppressively, with the wrongful intention of injuring
9 GUERIN, and with an improper and evil motive amounting to malice. Said acts were carried out
10 by managerial employees acting within the course and scope of their employment with Defendant
11 and with the intent to injure GUERIN. GUERIN is therefore entitled to recover compensatory and
12 punitive damages commensurate with Defendant's wealth and as set forth under California
13 Government Code sections 12900(a) – 12996 and California Civil Code section 3294.
14

15 WHEREFORE, GUERIN requests relief as hereinafter provided.
16

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO REASONABLY ACCOMMODATE A DISABILITY INCLUDING**
19 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN**
20 **VIOLATION OF THE AMERICANS WITH DISABILITIES**
21 **ACT OF 1990 42 U.S.C. §§ 12101 et seq.**

22 **AGAINST DEFENDANT SHELL VACATIONS**

23 58. GUERIN repeats and re-alleges the allegations set forth in paragraphs 1 through 57,
24 inclusive, of this Complaint.

25 59. GUERIN was at all times material hereto an employee, as defined with 42 U.S.C. §
26 12111(4) and thus covered by 42 U.S.C. § 12101 et seq., otherwise known as the "ADA". Said
27 statute requires that an employee's disability be reasonably accommodated in the workplace
28 unless to do so would result in an undue hardship for the employer. This includes engaging in an

1 interactive process with an employee to determine what reasonable accommodations are required
2 and can be provided by the employer to the employee in the workplace.

3 60. Defendant SHELL VACATIONS is and was at all times material hereto an
4 employer within the meaning of 42 U.S.C § 12111(5)(A). As such, Defendant SHELL
5 VACATIONS is required to reasonably accommodate an employee's disability unless to do so
6 would have caused an undue hardship for it.

7 61. Defendant SHELL VACATIONS failed to reasonably accommodate GUERIN'S
8 disability when CARTER refused to allow GUERIN time off from work, especially between April
9 and June of 2006, despite GUERIN'S own requests and those of his co-workers. GUERIN
10 informed CARTER that if he was not allowed the time off that he could relapse and start drinking
11 again. GUERIN also told CARTER that he had extremely high blood pressure, was experiencing
12 severe chest pains and had been cautioned by his physician that he could suffer a heart attack or
13 stroke. Given CARTER'S comments that he preferred GUERIN when he was drinking or that he
14 didn't like him when he was sober, GUERIN alleges that CARTER'S actions were intentional
15 against GUERIN.

16 62. Defendant SHELL VACATIONS' failure to reasonably accommodate GUERIN'S
17 disability resulted in GUERIN suffering from dangerously high blood pressure, chest pains and
18 other adverse physical side-effects. When CARTER'S behavior was combined with GUERIN'S
19 health problems, GUERIN had no choice but to resign his employment with Defendant SHELL
20 VACATIONS fearing that if he did not, he could possibly suffer a stroke, heart attack, or other
21 permanent damage to his physical and emotional health.

22 63. As a proximate result of Defendant SHELL VACATIONS' conduct, GUERIN has
23 suffered, and will continue to suffer, substantial losses incurred in earnings and other employment
24 benefits he would have received had Defendant SHELL VACATIONS not taken such adverse
25 employment action against him.

26 64. Further, and as a proximate result of Defendant SHELL VACATIONS' conduct,
27 GUERIN has suffered, and will continue to suffer, emotional distress damages including anxiety,
28 humiliation, physical pain and other emotional distress in an amount according to proof.

65. GUERIN is informed and believes that Defendant SHELL VACATIONS' actions, as set forth above, were motivated by animus towards GUERIN based on his disability. Said acts were committed maliciously, fraudulently and oppressively, with the wrongful intention of injuring GUERIN, and with an improper and evil motive amounting to malice. Said acts were carried out by managerial employees acting within the course and scope of their employment with Defendant SHELL VACATIONS and with the intent to injure GUERIN. GUERIN is therefore entitled to recover compensatory and punitive damages commensurate with Defendants' wealth, and as set forth under 42 U.S.C. § 1981(a)(2).

66. As a result of Defendant SHELL VACATIONS' discriminatory acts as alleged herein, including violation of the ADA, GUERIN was damaged in an amount to be proven at trial, including, but not limited to, compensatory, general and punitive damages, attorney fees and costs, according to proof and as provided by 42 U.S.C. § 1981(a)(2) and 42 U.S.C. § 12133.

SIXTH CAUSE OF ACTION

HARASSMENT BASED ON SEXUAL ORIENTATION IN VIOLATION OF CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, GOVERNMENT CODE SECTIONS 12900(a)-12996

AGAINST ALL DEFENDANTS

67. GUERIN repeats and re-alleges the allegation set forth in paragraphs 1 through 66, inclusive, of this Complaint.

68. Defendants CARTER and SHELL VACATIONS harassed GUERIN on the basis of his sexual orientation in violation of the FEHA, California Government Code sections 12900(a) through 12996, when, Defendant SHELL VACATIONS, primarily through its Director of Marketing, CARTER, harassed GUERIN because of his sexual orientation by continuously making derogatory and degrading comments on the basis of his sexual orientation and by constantly looking to and smirking at GUERIN when CARTER would call any other individual a "cock-sucker," a derogatory term regularly used by CARTER at work, especially when he was referring to someone he did not like. The derogatory term was also regularly used by other employees in the workplace.

1 69. CARTER'S harassment and Defendant SHELL VACATIONS' ratification of his
2 harassment, combined with Defendants' other discriminatory conduct, resulted in GUERIN
3 suffering from dangerously high blood pressure, chest pains and other adverse physical side-
4 effects. When CARTER'S behavior was combined with GUERIN'S health problems, GUERIN
5 had no choice but to resign his employment with Defendant SHELL VACATIONS or possibly
6 suffer a stroke, heart attack, or other permanent damage to his physical and emotional health.

7 70. Defendant SHELL VACATIONS engaged in a pattern and practice of
8 discriminating against and harassing employees, including GUERIN, on the basis of their
9 protected categories, including their sexual orientation, in violation of California Government
10 Code sections 12900(a) through 12996 by engaging in the course of conduct set forth above.

11 71. As a proximate result of Defendants CARTER'S and SHELL VACATIONS'
12 conduct, GUERIN has suffered, and continues to suffer, substantial losses incurred in earnings and
13 other employment benefits he would have received had Defendant SHELL VACATIONS not
14 taken such adverse employment action against him.

15 72. Further, as a proximate result of Defendants' CARTER and SHELL VACATIONS
16 conduct, GUERIN has suffered, and continues to suffer, emotional distress damages including
17 anxiety, humiliation, physical pain and other emotional distress in an amount according to proof.

18 73. GUERIN is informed and believes that Defendants CARTER'S and SHELL
19 VACATIONS' actions as defined above were motivated by animus towards GUERIN based on
20 his sexual orientation. Said acts were committed maliciously, fraudulently and oppressively, with
21 the wrongful intention of injuring GUERIN, and with an improper and evil motive amounting to
22 malice. Said acts were carried out by managerial employees with the intent to injure GUERIN.
23 GUERIN is therefore entitled to recover compensatory and punitive damages commensurate with
24 Defendants' wealth and as set forth under California Government Code sections 12900(a) – 12996
25 and California Civil Code section 3294.

26 74. As a result of Defendants CARTER'S and SHELL VACATIONS' discriminatory
27 and harassing acts as alleged herein, including violation of said California Government Code,
28 GUERIN was damaged in an amount to be proven at trial, including, but not limited to,

1 compensatory, general and punitive damages, attorney fees and costs according to proof and as
2 provided by California Government Code sections 12900(a) – 12996 and California Civil Code
3 section 3294.

4 WHEREFORE, GUERIN requests relief as hereinafter provided.

5 **SEVENTH CAUSE OF ACTION**

6 **VIOLATION OF THE FEDERAL FAMILY AND MEDICAL LEAVE ACT**
7 **29 U.S.C. §§ 2601-2636**

8 **AGAINST DEFENDANT SHELL VACATIONS**

9 75. GUERIN repeats and re-alleges the allegation set forth in paragraphs 1 through 74,
10 inclusive, of this Complaint.

11 76. GUERIN was at all times material hereto an employee covered within the meaning
12 of 29 U.S.C. § 2611(s). As such, he is protected from being discriminated and retaliated against in
13 employment based upon an employee's use of family and medical leave.

14 77. Defendant SHELL VACATIONS was and is at all times material hereto an
15 employer within the meaning of 29 U.S.C. § 2611(4) and as such, barred from discriminating in
16 employment decisions on the basis of an employee's use of medical leave for a serious health
17 condition.

18 78. Defendant SHELL VACATIONS discriminated against and retaliated against
19 GUERIN on the basis of his requested leave in violation of 29 U.S.C. §§ 2601-2636 when it
20 denied GUERIN time off for his disability and serious medical conditions including when
21 GUERIN informed CARTER that he was having chest pains and dangerously high blood pressure
22 as a result of CARTER'S tirades, harassment and discrimination of him in the workplace.
23 CARTER retaliated against GUERIN verbally when GUERIN asked for the time off by yelling at
24 him and using, among other swear words, the "f" word. Thereafter CARTER increased the
25 frequency and duration of his many tirades towards GUERIN resulting in GUERIN having no
26 choice but to resign his employment with Defendant SHELL VACATIONS or otherwise severely
27 jeopardize his health.

79. As a proximate result of Defendant SHELL VACATIONS' conduct, GUERIN has suffered and continues to suffer substantial losses incurred in earnings and other employment benefits he would have received had Defendant SHELL VACATIONS not taken such adverse employment action against him.

80. Further, as a proximate result of Defendant SHELL VACATIONS' conduct, GUERIN has suffered and continues to suffer emotional distress damages including anxiety, humiliation, physical pain and other emotional distress in an amount according to proof.

81. Defendant SHELL VACATIONS' actions as defined above were motivated by animus towards GUERIN based on his request for time off for his serious medical conditions and disability. Said acts were committed maliciously, fraudulently and oppressively, with the wrongful intention of injuring GUERIN and with an improper and evil motive amounting to malice. Said acts were carried out by managerial employees acting within the course and scope of their employment with Defendant and with the intent to injure GUERIN. GUERIN is therefore entitled to recover punitive damages commensurate with Defendant SHELL VACATIONS' wealth and as set forth under 29 U.S.C. § 2617.

82. As a result of Defendant SHELL VACATIONS' discriminatory and retaliatory conducts as alleged herein, including violation of said Federal Code, GUERIN was damaged in an amount to proven at trial, including, but not limited to, compensatory, general, and punitive damages, attorney fee's and costs according to proof and as provided by 29 U.S.C. §§ 2601-2654.

WHEREFORE, GUERIN requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION

**VIOLATION OF THE CALIFORNIA MOORE-BROWN-ROBERTI FAMILY RIGHTS
ACT, GOVERNMENT CODE § 12945.2**

AGAINST DEFENDANT SHELL VACATIONS

83. GUERIN repeats and re-alleges the allegation set forth in paragraphs 1 through 82 inclusive, of this Complaint.

1 84. GUERIN was at all times material hereto an employee covered by Cal. Gov't Code
2 § 12945.2 prohibiting discrimination and retaliation in employment based upon an employee's use
3 of family and medical leave.

4 85. Defendant SHELL VACATIONS was and is at all times material hereto an
5 employer within the meaning of Cal. Gov't Code §12945.2 and as such, barred from
6 discriminating in employment decisions on the basis of an employee's use of medical leave for
7 his/her own serious medical conditions and retaliating against an employee for requesting said
8 leave.

9 86. Defendant SHELL VACATIONS discriminated against and retaliated against
10 GUERIN on the basis of his requested leave in violation of Cal. Gov't Code § 12945.2 when it
11 denied GUERIN time off for his disability and serious medical condition when GUERIN was
12 experiencing chest pains and dangerously high blood pressure because of CARTER'S harassment
13 and discrimination of him in the workplace. CARTER and SHELL VACATIONS further
14 retaliated against GUERIN by responding harshly to GUERIN when he requested time off and by
15 increasing the frequency and duration of CARTER'S tirades against GUERIN.

16 87. As a proximate result of Defendant SHELL VACATIONS' conduct, GUERIN has
17 suffered and continues to suffer substantial losses incurred in earnings and other employment
18 benefits he would have received had Defendant SHELL VACATIONS not taken such adverse
19 employment action against him.

20 88. Further, as a proximate result of Defendant SHELL VACATIONS' conduct,
21 GUERIN has suffered and continues to suffer emotional distress damages including anxiety,
22 humiliation, physical pain and other emotional distress in an amount according to proof.

23 89. Defendant SHELL VACATIONS' actions as defined above were motivated by
24 animus towards GUERIN based on his request for time off for his serious medical conditions and
25 disability. Said acts were committed maliciously, fraudulently and oppressively, with the
26 wrongful intention of injuring GUERIN and with an improper and evil motive amounting to
27 malice. Said acts were carried out by managerial employees acting within the course and scope of
28 their employment with Defendant and with the intent to injure GUERIN. GUERIN is therefore

1 entitled to recover punitive damages commensurate with Defendant SHELL VACATIONS'
2 wealth and as set forth under Cal. Gov't Code § 12965.

3 90. As a result of Defendant SHELL VACATIONS' discriminatory and retaliatory
4 conducts as alleged herein, including by violating said Federal Code, GUERIN was damaged in an
5 amount to proven at trial, including, but not limited to, compensatory, general, and punitive
6 damages, attorney fee's and costs according to proof and as provided by Cal. Gov't Code § 12965.

7 WHEREFORE, GUERIN requests relief as hereinafter provided.

8 **NINTH CAUSE OF ACTION**

9 **WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY**
10 **AGAINST DEFENDANT SHELL VACATIONS**

11 91. GUERIN repeats and re-alleges the allegations set forth in paragraphs 1 through 90
12 inclusive, of this Complaint.

13 92. Defendant SHELL VACATIONS, and each of the other Defendants, violated
14 Federal and California public policy as embodied in the ADA, the FEHA, the CFRA and the
15 FMLA when it allowed, ratified and endorsed CARTER in creating an abusive, intolerable and
16 hostile work environment for GUERIN based on his disability, alcoholism, and request for time
17 off after working 90 days straight both as a reasonable accommodation for his disability and
18 because he was beginning to suffer serious medical conditions of dangerously high blood pressure
19 and reoccurring chest pains. GUERIN had been advised by his physician that the abusive and
20 harassing environment in conjunction with his serious medical conditions could lead to his having
21 a heart attack or stroke. Defendant SHELL VACATIONS created a hostile work environment for
22 GUERIN when it knew yet allowed CARTER to continuously go into abusive and unwarranted
23 tirades against GUERIN including when he made derogatory, harassing and demeaning statements
based upon GUERIN'S disability and sexual orientation.

24 93. Further, Defendant SHELL VACATIONS, and each of the other Defendants, by the
25 actions set forth above, wrongfully retaliated against GUERIN for asserting personal statutory
26 rights designed to protect workers and thereby wrongfully undermined the public policy advanced
27 by the social legislation embodied in California Government Code sections 12900(a) through
28

1 12996 and the ADA and the FMLA all on the basis of his disability and request for time off for his
2 serious medical conditions when CARTER was allowed to continue and increase his many
3 unwarranted and foul mouthed tirades against GUERIN.

4 94. Defendant SHELL VACATIONS', primarily through its Director of Marketing,
5 CARTER'S, actions were so intolerable, offensive, demeaning and physically and emotionally
6 damaging to GUERIN that neither he, nor any reasonable person, had any alternative but to resign
7 his employment. Indeed, GUERIN'S co-workers had also requested that CARTER give GUERIN
8 time off, again to no avail. Further, on information and belief, Defendant's Human Resources
9 Manager, Ignacio had received other complaints about CARTER'S harassment of employees and
10 had herself witnessed CARTER'S harassment of GUERIN and other employees yet took no pro-
11 active or corrective action against CARTER for the protection of any employees. Instead, Ignacio
12 turned her head and looked the other way. As such, GUERIN felt that he had no recourse
13 internally at SHELL VACATIONS and after receiving counsel and advice from his physician,
14 headed the warnings that he was seriously endangering his health and resigned immediately after
15 having been subjected to one of CARTER'S hour long tirades.

16 95. As a proximate result of Defendant SHELL VACATIONS' conduct, GUERIN has
17 suffered, and will continue to suffer, substantial losses incurred in earnings and other employment
18 benefits he would have received had Defendant SHELL VACATIONS not taken such adverse
19 employment action against him.

20 96. Further, and as a proximate result of Defendant SHELL VACATIONS' conduct,
21 GUERIN has suffered, and will continue to suffer, emotional distress damages including anxiety,
22 humiliation, physical pain and other emotional distress in an amount according to proof.

23 97. GUERIN is informed and believes that Defendant SHELL VACATIONS' actions,
24 as set forth above, were motivated by animus towards GUERIN based on his disability, request for
25 time off due to his serious medical condition and sexual orientation. Said acts were committed
26 maliciously, fraudulently and oppressively, with the wrongful intention of injuring GUERIN, and
27 with an improper and evil motive amounting to malice. Said acts were carried out by managerial
28 employees acting within the course and scope of their employment with Defendant SHELL

1 VACATIONS and with the intent to injure GUERIN. GUERIN is therefore entitled to recover
2 compensatory and punitive damages commensurate with Defendant's wealth, and as set forth
3 under California Civil Code section 3294.

4 98. As a result of Defendant SHELL VACATIONS' discriminatory acts as alleged
5 herein, including violation of said California Government Code, and the ADA and FMLA,
6 GUERIN was damaged in an amount to be proven at trial, including, but not limited to,
7 compensatory, general and punitive damages, according to proof and as provided by the respective
8 state and federal statutes.

9 WHEREFORE, GUERIN requests relief as hereinafter provided.

10 **TENTH CAUSE OF ACTION**

11 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

12 **AGAINST ALL DEFENDANTS**

13 99. GUERIN repeats and re-alleges the allegations set forth in paragraphs 1 through
14 98, inclusive, of this Complaint.

15 100. The conduct set forth above was extreme and outrageous and an abuse of the
16 authority and position of DEFENDANTS, and each of them. Said conduct was intended to cause
17 severe emotional distress or was done in conscious disregard of the probability of causing such
18 distress. In particular, DEFENDANTS engaged in an intentional and hostile course of conduct
19 creating such a hostile and abusive environment that GUERIN had no choice but to resign his
20 employment with Defendant SHELL VACATIONS. This conduct included CARTER
21 increasingly yelling and going into almost daily tirades against GUERIN for no reason, during
22 which he repeatedly swore, used the "f" word and demeaned GUERIN for his efforts.
23 Additionally, CARTER increasingly made derogatory comments to GUERIN about his sexual
24 orientation and disability, stating that he liked GUERIN better when he was drunk and not sober.
25 Finally, CARTER intentionally and without hesitation denied GUERIN any time off for at least 90
26 days straight despite GUERIN informing CARTER that he needed to take time off or he would
27 start drinking again and/or informed CARTER that his blood pressure had risen to a dangerous
28 level and he was experiencing chest pains.

1 101. As a proximate result of DEFENDANTS' conduct, GUERIN has suffered, and
2 will continue to suffer, substantial losses incurred in earnings and other employment benefits he
3 would have received had Defendants SHELL VACATIONS, and CARTER not taken such
4 adverse employment action against him.

5 102. Further, and as a proximate result of DEFENDANTS' conduct, GUERIN has
6 suffered, and will continue to suffer, severe emotional distress damages including anxiety,
7 humiliation, physical pain and other emotional distress in an amount according to proof.

8 103. GUERIN is informed and believes that DEFENDANTS' actions, as set forth
9 above, were motivated by animus towards GUERIN based on his disability, need for family leave
10 and sexual orientation. Said acts were committed maliciously, fraudulently and oppressively, with
11 the wrongful intention of injuring GUERIN, and with an improper and evil motive amounting to
12 malice. Said acts were carried out by managerial employees acting within the course and scope of
13 their employment with Defendant SHELL VACATIONS and with the intent to injure GUERIN.
14 GUERIN is therefore entitled to recover punitive damages commensurate with DEFENDANTS'
15 wealth, and as set forth under California Civil Code section 3294.

16 104. As a result of DEFENDANTS' discriminatory, harassing and retaliatory acts as
17 alleged herein, including violation of specified state and federal employment statutory provisions
18 prohibiting discrimination, harassment and retaliation, GUERIN was damaged in an amount to be
19 proven at trial, including, but not limited to, compensatory, general and punitive damages,
20 according to proof.

21 WHEREFORE, GUERIN requests relief as hereinafter provided.

22 **ELEVENTH CAUSE OF ACTION**

23 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

24 **AGAINST ALL DEFENDANTS**

25 105. GUERIN repeats and re-alleges the allegations set forth in paragraphs 1 -104,
26 inclusive, of this Complaint.
27
28

1 106. Negligent Infliction of Emotional Distress is severe emotional distress that is
2 proximately caused by a Defendant's negligent conduct or willful violation of a statutory standard.
3 California law mandates that an employer take the necessary action that is reasonably calculated
4 to end illegal and inappropriate conduct creating a harmful work environment for an employee.
5 An employer is thereby liable for the injury caused to an employee by its failure to eradicate the
6 harmful conduct of another of its employees that is causing another foreseeable harm and thus,
7 ratifying the conduct.
8


9 107. DEFENDANTS' conduct, as set forth above, caused GUERIN severe emotional
10 distress when it ignored its duty to stop the harmful and harassing conduct towards GUERIN,
11 primarily by CARTER. The employer knew of the unsafe and harmful conduct and the harm it
12 was causing GUERIN, including the large consumption of alcohol and drugs in the workplace,
13 CARTER'S harassment of GUERIN because of his disability, sexual orientation and CARTER'S
14 express denial of GUERIN'S request for time off despite GUERIN'S informing CARTER that he
15 was suffering from serious physical conditions and that if he did not have time off he may begin
16 consuming alcoholic beverages instead of remaining sober.
17

18 108. DEFENDANTS further caused GUERIN emotional distress when Defendant
19 SHELL VACATIONS ignored its duty to stop the harmful and harassing conduct towards him and
20 instead, expressly ratified CARTER'S conduct because it knew of CARTER'S behavior towards
21 GUERIN and other employees yet failed to correct it, discipline CARTER or terminate his
22 employment.
23

24 109. As a direct result of DEFENDANTS' negligent conduct against GUERIN, he has
25 sustained and continues to sustain substantial losses in earnings and other employment benefits.
26
27
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1 DATED: November 20, 2007

2 HUBER LAW FIRM

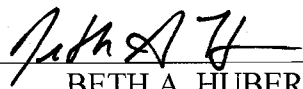
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4 By: 
5 BETH A. HUBER
6 Attorneys for Plaintiff JAMES L. GUERIN
7

8 **JURY DEMAND**

9 Plaintiff demands trial by jury in this action.

10 DATED: November 20, 2007

11 HUBER LAW FIRM

12
13 By: 
14 BETH A. HUBER
15 Attorneys for Plaintiff JAMES L. GUERIN
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